

26. Award M-335-03/BJC – On Line Hotel Reservation Services Agreement, to WorldRes.com, Inc. (WRI), San Mateo, California (20% to 25% Net Reservation Fee payable to the County).

M-335-03/BJC will provide for on-line reservation services for the Seminole County Convention and Visitors Bureau. The on-line reservation services offer content and real-time booking of accommodations for hotels, inns, motels, hotel groups, and other business establishments that provide for lodging of persons and which subscribe to the WRI Service. During the term of the Agreement, WRI agrees to pay to the County a referral payment, based on the Net Reservations Fees actually received by WRI, in the amount of:

Net Reservations per Calendar Quarter	County Percent
For all net reservations	Twenty percent (20%) of Net Reservation Fee

WRI will provide Net Reservations reports to the County within thirty (30) days of the end of the quarter. WRI will pay County within thirty (30) days of the end of the quarter on the applicable portion of Net Reservation Fees received by WRI during such quarter. In the event that a payment of less than \$25.00 is owed for any quarter, this payment shall be deferred until the first quarter in which aggregate payments owed exceed \$25.00. This Agreement will become effective the date of its execution by the parties, and will remain effective for an initial period of two (2) years. The initial term shall automatically be extended for successive periods of two (2) years, unless either party provides the other party with written notice of termination at least thirty (30) days prior to the end of such initial term. The Agreement does not contain an e-commerce insurance clause for the services to be provided.

Tourism Department and Fiscal Services/Purchasing and Contracts Division recommend the Board to approve the project and authorize the Chairman to execute the Agreement as approved by the County Attorney's Office.

BookNow! Private Label Program Agreement

This BookNow! Private Label Program Agreement (this "Agreement") sets forth the terms and conditions governing an entity's participation in the BookNow! linking program of WorldRes.com, Inc., a California Corporation ("WRI"), with offices at 1510 Fashion Island Boulevard, Suite 100, San Mateo, California 94404, USA.

By signing this Agreement or by linking to any part of the WRI web site, you, the entity named below ("Partner") are to be bound by the terms and conditions of the Agreement. Please read this entire Agreement before accepting its terms.

DEFINITIONS

"**Intellectual Property Rights**" shall mean all rights in and to trade secrets, patents, copyrights, trademarks, know-how, as well as moral rights and similar rights of any type under the laws of any governmental authority, domestic or foreign, including rights in and to all applications and registrations relating to any of the foregoing.

"**Links**" shall mean the markers in a WWW Page that contain a uniform resource locator ("**URL**") that enables a WWW user to move between one WWW site or WWW Page and another.

"**Net Reservations**" shall mean reservation made the WRI Service that have been actually paid for and completed; any reservation that a customer has cancelled or not fully paid for shall not be counted for the purposes of this Agreement. Net Reservations shall not include any reservation made by a user who has not linked directly to the WRI Service from the Partner Service in the manner described in this agreement and in the session in which the reservation is made.

"**Net Reservations Fees**" shall mean the transaction fees actually received by WRI from Net Reservations, less any taxes, refunds, bad debt and fees paid by WRI to complete such reservation transaction.

"**Partner Service**" shall mean the service provided at the partner web site set forth on the signature page below.

"**WRI Brand Feature**" shall mean a trademark, service mark, logo, or other indicia owned and used by WRI in connection with the WRI Service.

"**WRI Hotels**" shall mean hotels, inns, lodges, motels, hotel groups, and other business establishments that provide for lodging of persons, and which subscribe to the WRI Service as of the Effective Date of this Agreement or which subscribe to the WRI Service during the term of this Agreement.

"**WRI Service**" shall mean the on-line reservation service, owned and operated by WRI, that offers content and real-time booking of accommodations, and that presently resides principally at <http://www.placestostay.com> and is currently commercially referred to as *Places to Stay*, together with any incremental modifications made by WRI thereto.

"**WWW**" shall mean the World Wide Web, a system for accessing and viewing text, graphics, sound and other media via the Internet.

"**WWW Page**" shall mean the set of multimedia content returned from the WWW in response to a single user query via a WWW site.

AGREEMENT

Section 1. Links.

Subject to the terms and conditions of this Agreement, during the term of this Agreement, WRI grants to Partner the right to establish Links from the Partner Service to the WRI Service, and Partner agrees to incorporate and continuously display such Links within the Partner Service in a form mutually agreeable to the parties, that enable WWW users to access and utilize the WRI Service from the Partner Service.

Section 2. Trademark and Intellectual Property Matters.

2.1 Trademark License. WRI hereby grants to Partner a non-transferable, non-assignable, non-exclusive, royalty-free, worldwide license, without the right to sublicense, to use, display, and transmit WRI's Brand Features solely in connection with the use, display and transmission of Links from the Partner Service to the WRI Service pursuant to the terms of this Agreement.

2.2 Quality Control and Standards. WRI shall have the right to review and approve each use or display of the WRI Brand Features by Partner, and all use of WRI's Brand Features by Partner shall be in conformance with WRI's then-current standard trademark usage guidelines.

2.3 Ownership. Partner acknowledges and agrees that as between WRI and Partner, WRI owns all rights, titles and interests in and to the WRI Service and the WRI Brand Features. WRI acknowledges and agrees that as between Partner and WRI, Partner owns all rights, titles and interests in and to the Partner Service. The parties recognize that nothing in this Agreement shall confer in either party any right of ownership in the Intellectual Property Rights of the other party.

Section 3. Payment.

3.1 Net Reservations. Within thirty (30) business days after the last day of each quarter, WRI will calculate the total number of Net Reservations performed (consumed during that quarter and upon which WRI commission has been received by WRI) by WRI during the previous quarter and report such number to Partner and the basis for the referral payments due to Partner, as described below. During the term of this Agreement, WRI agrees to pay to Partner a referral payment, based on the Net Reservations Fees actually received by WRI, in the amount of:

Net Reservations Per Calendar Quarter
For all net reservations

Partner Percent
20% of Net Reservation Fee

We will provide Net Reservations reports within 30 days of the end of the quarter. We will pay you within 30 days of the end of the quarter on the applicable portion of Net Reservation Fees received by us during such quarter. In the event that a payment of less than \$25 is owed for any quarter, this payment shall be deferred until the first quarter in which aggregate payments owed exceed \$25. These fees and percentages are subject to change, upon WRI's notification to Partner.

Section 4. Confidential and Proprietary Information.

4.1 Confidential Information. "Confidential Information" shall mean any information of WRI or Partner which is identified as confidential or proprietary at the time of disclosure, by WRI or Partner, as applicable, to the other (whether owned by such party or a third party to whom the disclosing party owes a duty of confidentiality), including, but not limited to, any information concerning or relating to: (a) the disclosing party's proprietary technology and products, including without limitation, technical data, trade secrets, know-how, research, product plans, ideas or concepts, products, services, software, inventions, patent applications, techniques, processes, developments, algorithms, formulas, technology, designs, schematics, drawings, engineering, and hardware configuration information; and (b) the disclosing party's proprietary information relating to the disclosing party's operations and business or financial plans or strategies, including, but not limited to customers, customer lists, markets, financial statements and projections, product pricing and marketing, financial or other strategic business plans or information disclosed to the receiving party by the disclosing party, either directly or indirectly, in writing, orally, electronically, or by drawings or inspection of samples, equipment or facilities, and if orally disclosed, then reduced to writing and delivered to the receiving party within thirty (30) days of disclosure.

4.2 Exceptions. "Confidential Information" shall *not* include information which the receiving party can demonstrate by written documents or other tangible proof in existence at the time of the disclosure in question: (i) is known to the receiving party at the time of the disclosure by the disclosing party; (ii) has become publicly known or made generally available through no wrongful act of the receiving party or any third party owing a duty of non-disclosure to the disclosing party; (iii) has rightfully been received by the receiving party from a third party who has been authorized by the disclosing party to make such disclosures; or (iv) has been independently developed by employees or agents of the receiving party not exposed to the Confidential Information and without use of or reference to the disclosing party's Confidential Information.

4.3 Confidentiality Obligations. The parties recognize that, in connection with the performance of this Agreement, each of them may disclose to the other its Confidential Information. The party receiving Confidential Information ("Receiving party") from the party disclosing Confidential Information ("Disclosing party"), agrees not to use any Confidential Information disclosed to it by the Disclosing party for its own use or for any purpose, except as required to enjoy its rights or to carry out its obligations under this Agreement. The Receiving party will not disclose any Confidential Information of the Disclosing party to third parties or to employees of the Receiving party, except to its employees who are required to have the Confidential Information to allow the Receiving party to enjoy its rights or to carry out its obligations under this Agreement. The Receiving party will have or has had its employees who have access to the Disclosing party's Confidential Information execute a non-disclosure agreement that contains obligations of confidentiality at least as strict as those contained in this Agreement. The Receiving party agrees that it shall take all reasonable measures to protect the secrecy and confidentiality of and avoid disclosure or use of the Disclosing party's Confidential Information, to prevent such from falling in the public domain or the possession of persons other than those persons expressly authorized hereunder to have any such Confidential Information, which measures shall include at least the degree of care that the Receiving party utilizes to protect its own Confidential Information of a similar nature, but in any event not less than a reasonable degree of care. The Receiving party agrees to notify the Disclosing party promptly in writing of any misuse or misappropriation of the Disclosing party's Confidential Information which may come to the attention of the Receiving party.

4.4 Notwithstanding any other provision of this Agreement to the contrary, the parties recognize and agree that Chapter 119, Florida Statutes, the Florida Public Records Act, controls over the terms of this Agreement and that the County is required with comply with Chapter 119 and Article I, Section 24, of the Florida Constitution in the handling of materials created by and subject to this Agreement.

Section 5. Representation and Warranties; Disclaimer.

5.1 Mutual Representations and Warranties. Each party to this Agreement represents and warrants to the other party that: (i) Such party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (ii) The execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; (iii) When executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; (iv) Such party acknowledges that the other party makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement; and (v) The licenses and rights granted by such party under this Agreement, and the other party's use, reproduction and dissemination of Brand Features, as provided herein, will not infringe in any manner any trademark rights of any third party.

5.2 No Additional Warranties. EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS AND SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

Section 6. Indemnification.

6.1 Indemnification by WRI. WRI shall, at its own expense, indemnify, defend and hold harmless Partner, against any third-party claim, suit, action, or other proceeding brought against Partner based on infringement of third-party copyrights or trademark rights, to the extent that such claim, suit, action or other proceeding is based on or arises from: (i) the use, display, or transmission of WRI's Brand Features in strict accordance with this Agreement; or (ii) any material breach by WRI of WRI's representations or warranties in this Agreement; provided, however, that: (a) Partner provides WRI with prompt notice of any such claim; (b) Partner permits WRI to assume and control the defense and settlement of such action, with counsel chosen by WRI; (c) Partner does not enter into any settlement or compromise of any such claim without WRI's consent; and (d) Partner fully cooperates with WRI in such defense, at WRI's expense.

6.2 Indemnification by Partner. Partner shall, at its own expense, indemnify, defend and hold harmless WRI, against any third-party claim, suit, action, or other proceeding brought against WRI to the extent that such claim, suit, action or other proceeding is based on or arises from any material breach of Partner's representations or warranties in this Agreement; provided, however, that: (a) WRI provides Partner with prompt notice of any such claim; (b) WRI permits Partner to assume and control the defense of such

action, with counsel chosen by Partner (who shall be reasonably acceptable to WRI); and (c) WRI does not enter into any settlement or compromise of any such claim without Partner's prior written consent.

6.3 Reserved Rights. Without limitation of the foregoing, each party reserves all rights other than those expressly granted in this Agreement, and no licenses are granted except as expressly set forth herein. Partner agrees that it will not contest the validity of WRI's rights in the WRI Brand Features during the term of this Agreement, or after the expiration or termination of this Agreement.

6.4 Limitation on Liability. EXCEPT FOR ITS OBLIGATIONS UNDER SECTION 7.1, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING FROM ANY PROVISION OF THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. IN NO EVENT SHALL WRI'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY WRI TO PARTNER UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE ACTION.

Section 7. Term and Termination.

7.1 Term. This Agreement will become effective as of the Effective Date and, unless sooner terminated as provided below or as otherwise mutually agreed to by the parties, will remain effective for an initial term of two (2) years (the "Initial Term"). The Initial Term shall automatically be extended for successive periods of two (2) years (the "Extension Terms"), unless either party provides the other party with written notice of termination at least thirty (30) days prior to the end of such Initial Term or Extension Term, as applicable. As used herein, "Term" shall mean the Initial Term plus any applicable Extension Terms.

7.2 Termination for Cause. Notwithstanding the provisions of Section 8.1 hereto, either party may terminate this Agreement immediately upon notice, if the other party: (i) becomes insolvent; (ii) files a petition in bankruptcy which petition is not dismissed within sixty (60) days; or (iii) breaches any of its material obligations under this Agreement in any material respect, which breach is not remedied within thirty (30) days following written notice to such breaching party.

7.3 Obligations Upon Termination. Any termination pursuant to this Section 8 shall be without any liability or obligation of the terminating party (other than with respect to any breach of this Agreement prior to termination). Each party agrees that, upon termination of this Agreement it shall: (i) immediately remove all Links to the other party's URL; (ii) cease using or displaying the Brand Features of the other party; and (iii) return to the other party or destroy, as requested by the disclosing party, the original and all copies of any Confidential Information of the disclosing party and any summaries or analyses thereof or studies or notes thereon.

7.4 Survival. The obligations of Sections 2.3, 4, 5, 6, 7.3, 7.4, and 8 shall survive termination of this Agreement.

7.5 Termination for Convenience. Either party to this Agreement may terminate the Agreement for its own convenience and without penalty by giving a minimum of 30 days written notice of its intent to terminate to the other party.

Section 8. Miscellaneous Provisions.

8.1 Public Announcements. The parties will cooperate in good faith to create appropriate public announcements of the relationship set forth in this Agreement. Neither party shall make any separate public announcement relating to the relationship without the prior consent of the other party.

8.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to conflicts of laws rules.

8.3 Severability. If any provision of this Agreement is found invalid or unenforceable, that provision shall be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force.

8.4 Notices. All notices, requests and other communications called for by this Agreement shall be deemed to have been given immediately if made by telecopy or electronic mail (confirmed by concurrent written notice sent first class U.S. mail, postage prepaid), if to WRI at 1510 Fashion Island Boulevard, Suite 100, San Mateo, California 94404; Fax: 650-372-1701; e-mail: Partners@worldres.com, and if to Partner at the address set forth below or to such other addresses as either party shall specify to the other. Notice by any other means shall be deemed made when actually received by the party to which notice is provided.

8.5 Relationship of Parties. Notwithstanding any use of the term "partner" herein, neither this Agreement, nor any terms and conditions contained herein shall be construed as creating or constituting a partnership, joint venture or agency relationship between the parties. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

8.6 Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may be modified, or any rights under it waived, only by a written document executed by both parties.

8.7 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement, in whole or in part, without the other party's written consent; provided, however, that either party may assign this Agreement without such consent in connection with any merger, consolidation, any sale of all or substantially all of the party's assets or any other transaction in which more than fifty percent (50%) of the party's voting securities are transferred provided that the successor or assign assumes all of such party's obligations hereunder.

8.8 Waiver. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefit thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement or condition shall not operate as a waiver with respect to, any subsequent or other failure.

BookNow! Private Label Program Agreement

ACCEPTED AND AGREED

Please fax just this page (page 4 of 4) which confirms your acceptance of all 4 pages of the agreement to fax USA 877-619-8024. Upon receipt of your signed contract we will issue you with your tracking number, your starter kit and your linking instructions within a couple of business days.

Your Organization Name(PARTNER)

Signed by (For 4 of 4 pages)

Your Name

Your Title

Your Organization Address 1

Your Organization Address 2

City State Post Code

Country

Telephone

Fax

Email Address

Website URL

Today's Date

Please indicate where you plan on using your BookNow! buttons? ☐ Website ☐ InfoCenter

Please indicate which BookNow! you will be using? ☐ Destination ☐ Info ☐ Availability

☐ Package ☐ Change/Help/Enroll Online

Please indicate when would like to receive your reports? ☐ Monthly ☐ Weekly

Upon receipt of your signed contract by fax we will issue you with your starter kit that will include your tracking ID (FEID), links to your BookNow! Artwork and Launching Instructions for the BookNow! buttons you have indicated above.

For Office use only:

FEID: _____

Date issued: _____

Exp. Date: _____

Rep: _____